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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
08/478,192	06/07/95	JENDERSEE	B P-1906.01

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33M1/1015

EXAMINER	
LEWIS, W	
ART UNIT	PAPER NUMBER
3309	#a

DATE MAILED: 10/15/97

Please find below a communication from the EXAMINER in charge of this application.

Commissioner of Patents

# Office Action Summary

Application No.

08/478,192

Applicant(s)

Jendersee et al.

Examiner

William Lewis

Group Art Unit

3309



☒ Responsive to communication(s) filed on Jun 30, 1997

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-32 is/are pending in the application.

Of the above, claim(s) 5-11, 13-15, and 24-32 is/are withdrawn from consideration.

☒ Claim(s) 1-4 and 16-23 is/are allowed.

☒ Claim(s) 12 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 8

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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**Part III DETAILED ACTION**

***Election/Restriction***

1. Newly submitted claims 24-32 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claims are drawn to a species in which the stent is not encapsulated>

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 24-32 are withdrawn from consideration as being directed to a non-elected invention. See 1.142(a).

2. This application contains claims drawn to an invention non-elected with traverse in Paper No. 5. A complete response to the final rejection must include cancellation of non-elected claims or other appropriate action (37 CFR 1.144) MPEP § 821.01.

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***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --  
(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

4. Claim 12 are rejected under 35 U.S.C. § 102(e) as being clearly anticipated by Euteneuer et al. (US Pat. 5,445,646).

***Allowable Subject Matter***

5. Claims 1-4 and 16-23 are allowed.

***Response to Arguments***

6. Applicant's arguments filed 6-30-97 have been fully considered but they are not persuasive. Euteneuer et al. discloses the method (see figure 9).

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### **Conclusion**

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for response to this final action is set to expire THREE MONTHS from the date of this action. In the event a first response is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for response expire later than SIX MONTHS from the date of this final action.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to W. Lewis whose telephone number is (703) 308-0060.

  
WL

October 14, 1997



MICHAEL BUIZ  
SUPERVISORY PATENT EXAMINER  
GROUP 3300

10/14/97